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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93M-633

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In re Applications of)	MM DOCKET NO. 93-26
STEVEN L. GRADICKED BY)	File No. BPH-911031MD
TERRY C. JENKS)	File No. BPH-911031MF
For Construction Permit for a New FM)	
Station on Channel 288A)	
in Bowdon, Georgia)	

MEMORANDUM OPINION AND ORDER

Issued: October 1, 1993; Released: October 5, 1993

Background

1. This is a ruling on a Joint Request For Approval Of Settlement Agreement And Motion For Suspension Of Procedural Dates ("Joint Request") that was filed on September 16, 1993, by Steven L. Gradick ("Gradick") and Terry C. Jenks ("Jenks"). All procedural dates were suspended by the Presiding Judge on September 17, 1993. See Order FCC 93M-596. Gradick and Jenks also filed on September 23, 1993, a Supplement To The Joint Request For Approval Of Settlement Agreement (the "Supplement"). The Mass Media Bureau ("Bureau") filed Comments on September 29, 1993, in support of the settlement. Approval of this global settlement will terminate the proceeding.

Facts

2. The Joint Request contemplates that Jenks' application will be voluntarily dismissed with prejudice in return for a payment from Gradick in the amount of \$52,000. Gradick also seeks authorization to withdraw his divestiture proposal relating to Station WKNG(AM) in Tallapoosa, Georgia and Station WCKS-FM in Fruithurst, Alabama.

3. The Commission's rules permit recovery in a settlement of only the actual legitimate and prudent expenses incurred by the dismissing party. 47 C.F.R. §73.3525(a)(3) (1991). Jenks' attorney submitted legal invoices from a former law firm totalling \$43,238. Legal fees, related expenses, the filing fee of \$2,300 and the hearing fee of \$6,760 represent the total cost of prosecution to be \$74,680. See Joint Request at Exh. 1. Counsel for Jenks has filed a copy of his letter to Gradick's counsel to which are attached supporting invoices and in which he represents that Jenks' total fees and expenses exceed \$52,000. This accounting for costs conforms with Commission standards. See Amendment Of Section 73.3525, 6 F.C.C. Rcd 85, 91 n. 54 (1990) (brief description of the nature of the specific activity and connection with proceeding). Also, the required Declarations Of No Consideration have been filed by Gradick and Jenks.

4. It is found that Jenks is willing to settle for an amount which is less than his allowable expenses. The Agreement also contemplates that Gradick will make periodic payments. If Gradick defaults, he must assign the station to Jenks, with Commission authorization, and Jenks must return all partial payments received. If a default occurs after the case is terminated, the parties must seek any related relief with respect to disputed money payments in a court of law.

5. There has been an appropriate resolution in the Bowdon, Griffin, Hogansville and Sparta, Georgia allotments proceeding which satisfies the settlement conditions in this case. See Memorandum Opinion and Order, Chief, Policy and Rules Division (DA 93-932), 8 F.C.C. Rcd 5198, released August 4, 1993, terminating that proceeding.

Settlement

6. The statutory standard to be applied in accepting or rejecting a settlement proposal provides:

The Commission shall approve the agreement only if it determines that (a) the agreement is consistent with the public interest, convenience or necessity, and (b) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

Communications Act of 1934, as amended, Section 311(c)(3). See Oak Television of Everett, Inc., et al., 93 F.C.C. 2d 926 (Review Bd. 1983).

7. In this case, the Joint Request was filed in accordance with Section 73.3525. The parties have represented under penalty of perjury that their applications were not filed for the purpose of reaching or carrying out a settlement agreement and that the agreement is in the public interest. Also, the Bureau has no objection to approving the settlement. Therefore, it is determined that the parties have complied with 47 C.F.R. §§73.3525(a)(1) and (a)(2) of the Commission's rules. In addition, a review of Jenks' line-item expenses totalling \$74,680 are found to be legitimate and prudent in accordance with 47 C.F.R. §73.3575(a)(3) (1991).

8. Gradick has stated his intention to withdraw his divestiture commitment before there was an exchange of exhibits. Therefore, under present Commission policy he is permitted to withdraw the commitment. See Reform Proposals, 6 F.C.C. Rcd 157, 160 (1990), recon. granted in part, 6 F.C.C. Rcd 3403 (1991) (Comm'n permits applicant in "global" settlement to withdraw divestiture proposals). Also, by retaining the two broadcast facilities Gradick meets the Commission's common ownership requirements. See Revision of Radio Rules and Policies, 7 F.C.C. Rcd 2755 et seq. (1992).

9. There has been compliance with the local publication requirement of the Commission's rules. 47 C.F.R. §73.3594(g). The parties also have paid the required hearing fees. 47 C.F.R. §1.221(g). There are no disqualifying

issues to resolve.¹ Commission resources will be conserved by the termination of Jenks as a party applicant in this case prior to hearing. In addition, the public interest will be served by approval of this settlement which will reduce substantially the costs of litigation to the parties and to the Commission. Accordingly, it is appropriate that the proposed settlement between Gradick and Jenks be accepted.

Rulings

IT IS ORDERED that the Joint Request For Approval Of Settlement Agreement that was filed on September 16, 1993, by Steven L. Gradick and Terry C. Jenks, as supplemented, IS GRANTED and the Settlement Agreement between Gradick and Jenks IS ACCEPTED.

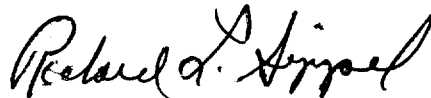
IT IS FURTHER ORDERED that the application of Terry C. Jenks (File No. BPH-911031MF) IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the application of Steven L. Gradick (File No. BPH-911031MD) to construct a new FM Station on Channel 288A in Bowdon, Georgia, IS GRANTED.

IT IS FURTHER ORDERED that Steven L. Gradick IS RELEASED from all divestiture commitments in this case with respect to Station WKNG (AM) and Station WCKS-FM.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

¹ See Order FCC 93M-131, released March 31, 1993, accepting an engineer's corrective technical statement and resolving environmental issue in favor of Gradick.